

## **REMARKS/ARGUMENTS**

Reconsideration and allowance of the above-identified application is respectfully requested in view of the amendments and remarks herein. Taken in conjunction with the personal interview conducted with the Examiner on October 29, 2003, no new issues are believed raised hereby that would bar entry of this amendment and allowance of the application.

### **Pending claims:**

Claims 14, 17, 18, 21-38, 40-42, 44-58 are pending. Claims 15, 16, 19, 20, 39, and 43 have been cancelled, and claims 54-58 have been newly added.

### **Formal issues:**

1. Claims 18, 19, 24, 26, 29, 30, and 34-53 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant has amended the currently pending claims in a manner believed to fully address and overcome the rejections made here.

In particular, with respect to the Examiner's comments regarding claims 34 and 51, reference is made to Figure 4 in the present application, which in part illustrates the claimed hinge. Also, with respect to the Examiner's comments regarding claims 35, 36, 52, and 53, these claims now recite, in pertinent part, that "a portion" of the unitary member "defines" a plane substantially transverse to the mean plane/suspension plane. Applicant believes that this clarification of the originally claimed subject matter fully addresses the Examiner's comments.

Withdrawal of this rejection is therefore believed appropriate.

2. Claims 14, 16, 18, 19, 22, 31, 37, 39, 41, 42, and 45 have been rejected under 35 U.S.C. 101. Claims 16, 19, and 39 have been cancelled, rendering the rejection thereof on this basis moot.

Claims 14 and 37 have been amended, in pertinent part, so as to remove what the Examiner considers a reference to the human body, as was discussed during the aforementioned interview. No new issue is raised in simply amending the claims so as to comport with 35 U.S.C. § 101, and the Examiner agreed that doing so would be permissible.

**Personal interview with the Examiner:**

Applicant thanks the Examiner for receiving his attorney for a personal interview on October 29, 2003. In accordance with MPEP § 714.04, Applicant offers the following comments concerning the interview.

As noted in the "Interview Summary" prepared by the Examiner immediately at the conclusion of the interview, claims 14-53 were discussed with respect to the Riley et al. and Ireland references of record. Applicant concurs that agreement was reached with the Examiner with respect to at least the following issues:

1. Applicant agrees with and appreciates the Examiner's indication that removing references to the ear is permissible here (i.e., doing so will not create a new issue requiring further consideration and/or search) in order to address the Examiner's objections under 35 U.S.C. § 101.

2. As indicated in the Interview Summary, Applicant maintains that claims directed to specific values or ranges of values for angles  $\alpha$ ,  $\beta$ ,  $\gamma$ , such as claims 17-19, 22-24, 31, 32, 40-42, and 45-49, recite non-trivial subject matter and cannot be simply considered to be met by a broad interpretation of the claims based only on the recitation of “approximately” in these claims.

3. Applicant agrees that claims emphasizing the structure of the attachment portion including angles  $\alpha$  and  $\gamma$  are patentable over the relied upon prior art.

In addition, it was agreed that a new set of claims directed to an attachment portion having a first elongated substantially rectilinear portion “constructed, sized, and arranged” to be retained in an earlobe and a second elongated substantially rectilinear portion “constructed, sized, and arranged” to be held abuttingly against a surface of an ear relative to the first elongated substantially rectilinear portion would be patentable over the relied upon art.

Therefore, in view of the positive response received from the Examiner, new claims 54-58 have been added herein in the understanding that these claims should be patentable over the prior art and thus should be acceptable for consideration here. Applicant notes that fewer new claims have been added than have been cancelled herein.

#### **Rejections based on prior art:**

1. Claims 14-17, 22, 23, 25, 28, 31-35, 37, 39, 40, 45, 46, and 48-52 were rejected under 35 U.S.C. § 102(b) as being obvious over Riley et al. Applicant respectfully traverses.

Amended independent claim 14 incorporates subject matter from claims 15 and 20.

Riley et al. fails to teach or suggest an earring having a decorative ring defining a mean plane and an attachment portion having at least: 1) a first elongated portion extending in a direction out of the mean plane, and 2) angles  $\alpha$  and  $\gamma$  as recited in claim 14 as amended.

As a result, independent claim 14 is patentably distinguishable over Riley et al., as are claims 17, 18, and 21-36 depending therefrom.

Likewise, Riley et al. fail to teach or suggest at least an attachment portion of an earring as claimed in presently amended independent claim 37 (which incorporates subject matter from claim 43), the attachment portion comprising first and second elongated substantially rectilinear portions having an angle  $\beta$  therebetween and a third elongated substantially rectilinear portion connected to the second elongated portion with an angle  $\gamma$  therebetween, such that the first elongated portion extends at angle relative to the suspension plane of a decorative part of the earring.

As a result, independent claim 37 and claims 40, 45, 46, and 48-52 depending from claim 37, are patentably distinguishable over Riley et al.

As noted above, the rejection of dependent claims 17, 18, 22-24, 31, and 32, which recite specific angle values or ranges of angle values, is traversed because Riley et al. fail to teach (or even suggest) any particular values (including the specific ones claimed), regardless of the presence of the term “approximately” in some claims. Applicant again notes that the angle values claimed are non-trivial for the reasons set forth in the originally filed application. Finally, with respect to claim 18, Applicant notes

that Riley et al. fail to teach the third angle  $\gamma$ , such that the limitations of claim 18 necessarily cannot be disclosed.

2. Claims 14 and 16-53 were rejection under U.S.C. § 102(b) as being anticipated by Ireland.

With respect to independent claim 14, Ireland fails to teach or suggest at least that the first elongated portion of the attachment portion extends in a direction out of the mean plane of the ring (as was previously recited in claim 15). The Examiner has asserted in the Official Action that the portion between reference numerals 20 and 22 in Figure 4 of Ireland corresponds to the first elongated portion, but this part clearly does not extend in a direction out of the mean plane of the ring, as presently claimed.

As a result, independent claim 14 is patentably distinguishable over Ireland, as are claims 17, 18, and 21-36 depending therefrom.

With respect to independent claim 37, Ireland fails to teach or suggest at least the first elongated portion extending at an angle  $\alpha$  relative to the suspension plane of the suspendable decorative part. The segment in Ireland corresponding to the first elongated portion according to the Examiner (i.e., the segment between reference numerals 20 and 22 in Figure 4) does not extend at an angle relative to a suspension plane. See, for example, Figure 3 in Ireland.

In view of the foregoing, independent claim 37 is patentably distinguishable over Ireland, as are the pending claims that depend therefrom.

In addition, Applicant traverses the rejection of claims 40-42 and 45-49 over Ireland based on the mere recitation of "approximately" in the claims, without any

relevant teaching or suggestion in the reference as to the claimed angle values or ranges of angle values.

**Conclusion:**

In view of the foregoing, Applicant submits that all outstanding issues have been fully addressed in accordance with the agreement(s) reached with the Examiner during the October 29, 2003 personal interview. Favorable reconsideration and allowance of the present application are therefore respectfully solicited.

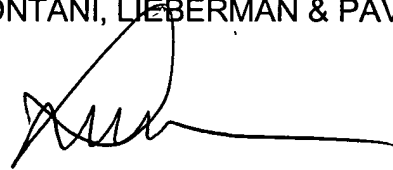
A check in the amount \$86.00 is enclosed in payment for the addition of 1 new independent claim.

It is believed that no additional fees or charges are required at this time in connection with the present application; however, if any fees or charges are required at this time, the same may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,

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